



Task Force on Court Facilities

455 Golden Gate Avenue, San Francisco, CA 94102-3660

Meeting Report

July 19 & 20, 2001

Holiday Inn Santa Barbara/Goleta

Goleta, CA

ATTENDEES: TASK FORCE MEMBERS: PRESENT: Hon. Daniel J. Kremer, Chair Mr. Greg Abel Mr. Wylie Aitken Hon. Joan B. Bechtel Ms. Yvonne Campos Mr. John Clarke Hon. Jerry Eaves Hon. Gary Freeman Mr. David Janssen Mr. Fred Klass Mr. Paul Krekorian Hon. Michael Nail Hon. Wayne Peterson Hon. Charles V. Smith Mr. Anthony Tyrrell Hon. Diane Elan Wick ABSENT: Mr. Mike Courtney Sheriff Robert T. Doyle	TASK FORCE STAFF: Mr. Robert Emerson, Project Manager, Senior Facilities Planner Ms. Patricia Bonderud, AIA, CSI, Facilities Planner PRESENTERS: Mr. Robert Emerson, Administrative Office of the Courts Mr. Jay Smith, Daniel, Mann, Johnson, & Mendenhall Mr. Andrew Cupples, Jacobs Facilities GUESTS: Mr. John H. Abbott, County of Orange Mr. Hector De La Torre, City of Southgate Mr. Bruce Doenges, Superior Court, County of Ventura Mr. Michael A. Fischer, Administrative Office of the Courts Mr. Steve Keil, California State Association of Counties Mr. Dave Kronberg, County of Sonoma General Services Mr. Ken Masuda, County of Santa Barbara Mr. Jack Miller, County of San Diego Ms. Nghia Nguyen, County of Orange Ms. Eraina Ortega, Administrative Office of the Courts Mr. Ronald G. Overholt, Administrative Office of the Courts Mr. John Siden, County of Yolo Mr. Christopher Tyas, Superior Court, County of Los Angeles Mr. John Van Whervin, Superior Court, County of Los Angeles

I. OPENING REMARKS – Justice Daniel Kremer

A) Justice Kremer opened the task force meeting at 10:00 a.m. and reviewed the meeting agenda.

B) The task force reviewed and unanimously approved the meeting report from the March meeting in San Diego (Meeting # 17).

II. COMMENTS ON THE SECOND INTERIM REPORT – Mr. Robert Emerson

A) Mr. Emerson presented an outline of the issues raised in the letters received containing comments on the Second Interim Report. The issues were presented as a series of questions, arranged by general topic. These issues, along with comments and decisions of the task force, are presented below.

1) Americans with Disabilities Act

a) Should the report place more emphasis on meeting ADA requirements in existing and new facilities?

i) ADA compliance is addressed under item 6a below.

b) Should the comment letter (from Disability Rights Advocates) be formally referred to the Judicial Council and the Administrative Office of the Courts?

i) Justice Kremer noted that the sense of the task force is to refer the letter to the Judicial Council and Administrative Office of the Courts.

2) Alternate Use

a) No issue identified for review.

3) Capital Costs

a) Should the report be revised to include the effects of inflation on the estimated costs?

i) Mr. Abel noted his preference for having the costs stated, in some manner, in 2001 dollars.

ii) Mr. Aitken voiced his opinion that leaving the cost estimates in 1999 dollars may give the appearance of intentional understating of the costs.

iii) Mr. Jay Smith suggested that a conversion factor from 1999 to 2001 dollars be provided in the report along with an example of its application to the cost figures.

iv) Justice Kremer noted the concurrence of the task force with the approach suggested by Mr. Smith.

b) If so, should the costs be stated in 2001 dollars or should future inflation be explicitly considered?

i) Mr. Emerson noted that updating the financial analysis to account for potential inflation effects over the 25-year period covered by the analysis would make the results of the analysis, particularly in later years, highly dependent upon the various factors selected for application to the different components of costs and revenues.

ii) Justice Kremer noted the preference of the task force for updating the costs to 2001 dollars as noted above but not for forecasting on-going inflation over the future period of the financial analysis.

4) Capital Project Oversight

a) Should oversight of capital projects be performed by the Public Works Board or by a new board established by the Judicial Council?

i) Mr. Klass noted that the Public Works Board provides oversight of almost all capital expenditures by the state. However he noted that the board does have the power to delegate, at its discretion, oversight responsibilities to other bodies

and that in the future the board could delegate oversight responsibility to a board established by the Judicial Council.

ii) Justice Kremer noted the sense of the task force that the report be modified to add language noting that the Public Works Board has the authority to delegate project review and oversight and may in the future delegate oversight, at its discretion, to the Judicial Council.

b) Should the oversight board include representatives from the counties?

i) Justice Kremer noted the sense of the task force that for purposes of oversight the Public Works Board did not need to include representatives of the counties.

5) Civil Filing Surcharge

a) Should the model used for the surcharges be changed from that of Riverside County to that of San Francisco County to increase revenue?

i) Mr. Emerson noted that the estimated revenue generated applying the Riverside model is \$30.3 million and that generated by applying the San Francisco model is \$54 million.

ii) Judge Wick noted several differences between the two models, one of the key differences being that the Riverside model imposed a surcharge on civil filings whereas the San Francisco model applied a surcharge to both civil filings and answers.

iii) Mr. Aitken expressed his general philosophical opposition to imposition of the fees, but also noted his view that they should apply to both sides.

iv) Mr. Krekorian also noted his support of the broader application of the surcharges.

v) Mr. Abel noted that the increased surcharges could result in increased requests for fee waivers that may reduce the increase in revenues. He noted that the reduction of the increase may be as much as 25%.

vi) Mr. Janssen noted that the revenue from application of the civil filing surcharges has not been included in the model analyses, but rather as a footnote at page 85 which notes the offset of the increased revenue.

vii) Justice Kremer noted the sense of the task force that the San Francisco model, rather than the Riverside model, should be recommended for adoption. In addition, the projected revenue should be discounted by a shrinkage factor, to be recommended by staff, to account for fee waivers.

6) Condition of Facilities

a) Should meeting ADA requirements (or correcting other shortcomings) for existing facilities be a county responsibility?

i) Judge Peterson expressed his view that the report should encourage counties to continue to improve court facilities' ADA compliance.

ii) Mr. Krekorian noted his view that ADA compliance was fundamentally different than correcting other shortcomings in that ADA compliance is public policy.

iii) Mr. Aitken suggested that the task force should make a statement of policy in the report that prompt ADA compliance should be encouraged.

iv) Supervisor Freeman noted that counties have ADA compliance plans and that when a building is renovated ADA concerns are addressed.

v) Mr. Abel noted his concurrence with Mr. Krekorian that ADA compliance was different from deferred maintenance.

vi) Supervisor Smith noted that the cost to bring all court facilities into ADA compliance before transfer would be very high.

vii) Judge Nail suggested that the report urge counties to follow through with planned ADA compliance during the transition period.

viii) Mr. Aitken reiterated his view that a statement of policy to encourage steps toward ADA compliance is needed.

- ix) Mr. Janssen suggested that the report be revised to include language urging counties not “to drag their feet” on maintenance issues and that ADA compliance should be included as an example.
- x) Justice Kremer noted the sense of the task force that the report should include broad language on the counties’ responsibility to provide suitable and necessary court facilities including meeting ADA requirements.
- xi) Mr. Abel suggested that the statement be included in the General Transfer Principles on page 88 of the report.

7) Courthouse and Justice Construction Funds

- a) Should counties be required to account for Courthouse Construction Fund expenditures over the past three years?
 - i) Justice Kremer noted the sense of the task force that this recommendation for an accounting be included in the report.
- b) Should new expenditures from the Courthouse Construction Fund require court approval?
 - i) Mr. Abel noted his view that only new, not existing commitments, should require court approval.
 - ii) Mr. Abel made a motion that new expenditures made between the effective date of the legislation and the transfer of facilities be subject to approval by the local court. All voted in favor except for Mr. Janssen and Supervisor Smith who were opposed; the motion passed.
- c) Should waived jury fees and unclaimed jury demand fees be deposited in the Courthouse Construction Fund?
 - i) Mr. Abel noted that some courts may rely on these fees to balance their operating budgets.
 - ii) Mr. Clarke agreed, noting that these fees may be essential to the operating budgets of some courts.
 - iii) Justice Kremer noted the sense of the task force not to recommend any change relative to these fees.
- d) Should the collection of fees be audited by the Judicial Council?
 - i) Justice Kremer noted the sense of the task force that the Judicial Council should conduct audits of the fee collection regularly and periodically.
- e) Should pledged funds remain as county revenue to allow for bond refinancing?
 - i) Justice Kremer noted the sense of the task force that this issue has been adequately addressed and no change in the report is needed.
- f) Should the contribution to the Courthouse Construction Fund be changed from the currently recommended \$3 to \$5 or some other level, either fixed or variable?
 - i) Mr. Abel made a motion to increase the contribution to \$5 and to allow counties to raise the ceiling on the fees to avoid impacting other uses of funds. All voted in favor, except for Justice Kremer and Mr. Aitken who were opposed; the motion passed.
- g) Should counties that collect the fees deposited in the Courthouse Construction Fund receive an administrative fee?
 - i) Justice Kremer noted the sense of the task force that the report should not recommend payment of administrative fees for the collection of fees for the Courthouse Construction Fund.
- h) Should the \$17 penalty assessment fee ceiling be raised or kept fixed?
 - i) As noted under item f above, the task force voted to recommend allowing counties to increase the penalty assessment ceiling.

8) Current Projects

- a) Should there be a provision to allow projects, which are being planned by the courts and the counties and are cost-neutral or result in savings, to move forward?

- i) Justice Kremer noted that the report contains no prohibition on projects moving forward under current law and he further noted the sense of the task force that no change to the report in this area is needed.

9) Existing Debt

- a) No issue identified for review.

10) General Funding

- a) Should one-to-one cost sharing between the counties and the state for funding current needs be recommended?

- i) Justice Kremer noted that state funding for current needs was at the core of the balancing of county and state interests as currently embodied in the report.
- ii) Mr. Abel noted that the origin of the concept for cost sharing between the state and the counties lay in the large estimated cost of current needs and the potential reluctance of the state to assume such a commitment.
- iii) Mr. Janssen noted his view that any cost sharing should be a legislative decision.
- iv) Justice Kremer noted the sense of the task force that no change to report is needed regarding this issue.

- b) Should the report be revised to emphasize the need for additional revenue sources for court facilities whether or not the state assumes responsibility for court facilities?

- i) Supervisor Eaves suggested adding a sentence to the report noting that the increased revenues are needed regardless of whether responsibility for court facilities transfers to the state.
- ii) Justice Kremer noted the task force's agreement with Supervisor Eaves' suggestion.

- c) Should the financial analysis be revised to reflect identified changes in lease costs?

- i) Mr. Janssen noted that lease costs will be accurately captured during the negotiations of the MOEs and that the identified change in lease costs would not have a significant impact on the overall result of the financial analysis presented in the report.
- ii) Justice Kremer noted the sense of the task force that no change to the report is needed.

11) Historic Buildings

- a) Should the report explicitly state that the transfer of historic buildings requires the approval of the county board of supervisors?

- i) Supervisor Eaves made a motion that the report include language to the effect that the transfer of historic buildings require the approval of the county board of supervisors and confirming that historic buildings are expected to be made available for continued court use. The motion passed unanimously.

12) Insurance and Liability

- a) Should the report specifically note that liability should be considered in developing Memoranda of Understanding?

- i) Justice Kremer noted the sense of the task force that liability should be mentioned in the report as one issue that should be considered in developing MOUs between the counties and the state.

13) Maintenance and Support

- a) No issue identified for review.

14) Miscellaneous

- a) No issue identified for review.

15) Mixed-use Buildings

- a) Should more detailed guidelines on handling certain aspects of mixed-use buildings, such as parking garages, be provided in the report?
- b) Should the discussion of the handling of on-going costs for county office relocation be expanded?
- c) Should counties have an absolute right to reject expansion of court facilities into previously non-court space?
- d) Should a joint powers arrangement be an option for operation of mixed-use buildings?
- e) Should title to mixed-use buildings remain with the county until debt on the building is retired?
- f) On what basis should the transfer of land associated with a mixed-use building occur?
- g) Is the recommended ownership structure and planning process too complex?
- h) Regarding all of the above issues concerning mixed use buildings:
 - i) Mr. Janssen noted that all the issues have been adequately covered in the report.
 - ii) Supervisor Smith noted that specific concerns related to these issues will be reviewed and covered during MOU negotiations.
 - iii) Justice Kremer noted the sense of the task force that no changes to the report are needed regarding these issues.

16) Maintenance of Effort Obligations

- a) Should extraordinary expenses for maintenance, including seismic upgrades, be excluded from the cost basis MOE obligations?
 - i) Mr. Abel noted that identifying individual projects and their associated costs would be difficult and adversarial.
 - ii) Justice Kremer noted the sense of the task force that no change to the report is needed relative to this issue.
- b) In calculating facility management and administration costs, should only full-time positions be considered?
 - i) Justice Kremer remarked that the intent of the current language is that the management and administrative costs are intended to include any costs that would be billed to the county if the services were contracted out and he further noted the sense of the task force that no change to the report is needed.
- c) Should the cost basis for including for utilities be changed?
 - i) Justice Kremer noted the sense of the task force that the method for establishing the cost basis for utilities does not need to be changed from what is currently recommended.
- d) Should a statewide average be used to calculate the MOE obligations?
 - i) Mr. Klass noted that statewide averaging may be a good idea but did not see a practical way to allocate the costs county-by-county.
 - ii) Justice Kremer noted the sense of the task force that no change to report is needed relative to this issue.
- e) Should the process for establishing the specific amount of MOE obligations be changed?
 - i) Mr. Janssen noted that the report does not prohibit the court and the county from working cooperatively together to arrive at the amount of the MOE obligations.
 - ii) Mr. Abel noted that the process recommended in the report follows the process used previously to establish the court operations MOEs.
 - iii) Justice Kremer noted the sense of the task force that no change to the language of the report on this issue is needed.

17) Memoranda of Understanding

- a) Should trial courts review and approve Memoranda of Understanding?
 - i) Mr. Janssen noted that a correction is needed to item 2 under Transferring Responsibility on page 90 to reflect that the Judicial Council, in consultation with the local courts, shall negotiate with the counties rather than as currently stated.
 - ii) Justice Kremer noted the sense of the task force that it should be noted at the top of page 96 that the negotiations conducted by Judicial Council shall be undertaken in consultation with the local courts.
- 18) Planning and Siting
- a) Should a formal role for county participation in the planning process for court facilities be established?
 - i) Mr. Janssen expressed his view that planning for other justice facilities, such as jails, should be integrated with court facility planning.
 - ii) Supervisor Smith noted that the call for cooperation between justice agencies in planning efforts should be expressed more strongly.
 - iii) Mr. Klass noted that coordinated planning between the courts and other justice agencies is a two-way street.
 - iv) Justice Kremer noted the sense of the task force that the report should place more emphasis on cooperative planning, such that in making siting decisions courts would consider existing county plans and the needs of all related justice system agencies.
 - b) If so, should this role include the right to disapprove a court facility location?
 - i) Justice Kremer noted the sense of the task force that the county's role should not include the right to disapprove court facility locations.
 - c) Should the prioritization of projects be addressed?
 - i) Judge Wick expressed her view that prioritization of projects was not part of the task force's charge.
 - ii) Justice Kremer noted the sense of the task force that project prioritization should be left to the budget and legislative process.
- 19) Projections
- a) No issue identified for review.
- 20) Rejection of Buildings
- a) Should the appeal of the rejection of a building by the state be decided by a board with county, court, and state representation?
 - i) Mr. Abel suggested that the Public Works Board be augmented by a county representative and a court representative when considering the appeal of the rejection of a building by the state and that these representatives be voting members of the board for this purpose.
 - ii) Justice Kremer noted the agreement of the task force with Mr. Abel's suggestion.
 - b) Should the state be able to reject a building if the current procedure for identifying a facility as not "suitable and necessary" has not been utilized by the local court?
 - i) Mr. Abel noted that the referenced procedure was arduous and time-consuming and is used only as a last resort.
 - ii) Justice Kremer voiced his opinion that the standard for building rejection is set high and further he noted the sense of the task force that the criteria and process for building rejection did not need to be changed.
 - c) Should the criteria for building rejection be amplified?
 - i) Justice Kremer noted that the task force had thoroughly discussed the criteria for rejection and he noted the sense of the task force that the criteria did not need to be amplified.
- 21) Responsibility Transfer and Schedule
- a) Should the proposed schedule for transfer of facilities be modified?

- i) Mr. Abel noted that the three-year period was set to cover the time required for the more complex situations and that many counties' facilities would transfer in a shorter period.
 - ii) Justice Kremer noted that rapid transfer of facilities is encouraged and further noted the sense of the task force that the proposed schedule given in the report should not be revised.
 - b) Is the proposed structure for ownership of court facilities too complicated and cumbersome?
 - i) Mr. Abel noted that the structure may be complex, but that it fits the complexity inherent in the transfer from the current state of county responsibility for court facilities to state responsibility.
 - c) Should state responsibility for court facilities take the form of a grant program?
 - i) Justice Kremer noted the sense of the task force that state responsibility should not take the form of a grant program.
- 22) Sale of Buildings
 - a) Should counties have right of first refusal to buy, at nominal cost, properties being sold by the state?
 - i) Justice Kremer noted the sense of the task force that the counties should not have the right suggested and that no change in the report language regarding disposition of buildings by the state is needed.
 - b) Should building equity gradually transfer to the state over a period of years?
 - i) Justice Kremer noted the sense of the task force that equity should transfer as currently outlined in the report and not gradually over a period of years.
- 23) Security
 - a) No issue identified for review.
- 24) Space Mitigation
 - a) Should the report be modified to emphasize the potential \$400 million savings that could be achieved by implementing the space mitigation options?
 - i) Justice Kremer noted the sense of the task force that language referring to the space mitigation measures and associated cost savings should be added to the report where total estimated costs are first mentioned.
- 25) Transition
 - a) Are there additional measures that could be taken during the transition period to identify and address the immediate facility needs of the courts?
 - i) Mr. Abel noted that the task force had not conceived of any measures beyond those suggested in the proposal for urgency legislation.
 - ii) Mr. Jay Smith suggested that the recommendation for passage of urgency legislation should be included in the section on key recommendations in the reports' executive summary.
 - iii) Justice Kremer noted the task's force's agreement with Mr. Smith's suggestion.
 - b) Should specific language be added indicating that funding of transition staff should begin July 1, 2002 (six-months before the scheduled date of initial transfer of facilities)?
 - i) Supervisor Freeman suggested that the text be clarified to include the suggested date for funding of transition staff.
 - ii) Mr. Janssen suggested that an addition be made to the Long-Term Organizational Recommendations section of the report to specify that the funding of the staff should begin July 1, 2002.
 - iii) Justice Kremer noted the task force's agreement with Supervisor Freeman's and Mr. Janssen's suggestion.

c) Related to the transition, Mr. Abel moved that the increased fees discussed earlier should become effective on the effective date of the legislation. The motion passed unanimously. Mr. Klass suggested noting this effective date in the report.

B) During the discussion of the Second Interim Report the following general items related to the task force's work were discussed.

1) Supervisor Bechtel requested that the staff present an accounting of task force expenditures. Mr. Emerson said that an accounting will be provided at the next task force meeting.

2) Mr. Janssen requested that the staff provide an overview of the court master planning effort under way at the AOC. Mr. Emerson indicated that a presentation will be made on this subject at the next task force meeting.

3) Supervisor Smith suggested that individual responses be sent to all persons who provided comments on the Second Interim Report. The response would outline the action taken by the task force relative to the individual's comments. Justice Kremer noted the sense of the task force that individual responses should be prepared. He further noted that the Writing Working Group could provide assistance to staff in this effort by reviewing the responses and that the responses could be provided at the time the final report is issued. He noted that an outline of the changes to the report should be developed and that the outline could serve as a reference for development of the individualized responses.

III. PUBLIC COMMENT – Justice Daniel Kremer

A) Mr. John Miller addressed the task force regarding two concerns related to current and planned court facilities in San Diego County. First he commented that the old courthouse in downtown San Diego had all the courtrooms declared deficient based solely on the fact that the circulation pattern had inmates crossing or traveling along public corridors. He questioned whether this criteria had been applied to all courtrooms state wide. He stated that, in his view, there is no practical remedy for this particular courthouse. Second, he raised a concern related to the county spending 12 million dollars for the purchase of a downtown block that could be the site for a new courthouse and the apprehension the Board of Supervisors might have about the purchase. He was concerned about the state taking the block after purchase without any reimbursement. His specific question was: Could he get approval from the Judicial Council and the Dept. of Finance, conditioned on the emergency legislation suggested before it was even introduced, that would allow for reimbursement? Mr. Janssen and Mr. Jay Smith pointed out that under the recommendations of the task force, land associated with particular court facility projects underway may transfer to the state, but that land acquired for general county purposes, not associated with a court facility project would not fall under those recommendations.

IV. REVIEW OF SUPREME COURT AND COURTS OF APPEAL REPORT (Draft) – Mr. Andrew Cupples

A) Mr. Cupples presented an overview of the report including a review of the background and jurisdiction of the courts, a summary of the inventory and evaluation of current facilities, the calculation of adjusted shortfalls and projected growth, and facilities options. He noted that the report will be circulated to the Supreme Court and the Courts of Appeal for review and comment.

B) Mr. Krekorian asked whether the circulation included the public. Justice Kremer directed that the report also be sent to selected bar associations with significant appellate practices among their members and that he could supply the staff with a circulation list.

V. CLOSING REMARKS – Justice Daniel Kremer

A) Justice Kremer adjourned the meeting at 8:45 a.m.